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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,926	12/09/2003	Philip J. Robinson	18388 USA	6652

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OWENS-ILLINOIS, INC.
ONE SEAGATE, 25-LDP
TOLEDO, OH 43666

EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,926

Applicant(s)

ROBINSON, PHILIP J.

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informalities: the phrase "is oval is cross-section" should be changed to "is oval in cross-section." Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 7-8 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Montgomery US 4,213,534.

In the embodiment of figures 3-4, Montgomery '534 teaches an outer peripheral sidewall (22), an inner sidewall (21), and a set of diametrically opposed locking lugs (26).

4. Claims 1-3, 7-9 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Minnette US 6,343,705.

In the embodiment of figures 14-15, Minnette '705 teaches an outer peripheral sidewall (222), an inner sidewall (230), and a set of diametrically opposed locking lugs (227). Because the lugs do not extend radially, but instead are slightly chordal, they create at least a "v-shaped" recess which meets the claimed limitation of "generally U-shaped." Finally, column 3, line 38 teaches the closure is to be formed of polypropylene.

5. Claims 1-3, 7-9 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Vassallo US 6,640,987.

In the embodiment of figure 3, Vassallo '987 teaches an outer peripheral sidewall (47), an inner sidewall (43), and a set of diametrically opposed locking lugs (49). Examiner notes figure 4, showing the

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lugs (49) have a U-shaped recess. Finally, column 3, lines 2-4 teaches the closure is to be formed of polypropylene.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery US 4,213,534 in view of Robinson US 5,915,576.

Montgomery '534 fails to teach an inwardly tapered upper portion of the cap, an outwardly tapered lower portion with grip pads, and which is thicker than the underlying portion of the sidewall.

Robinson '576 teaches an inwardly tapered upper portion of the cap (unlabeled; best seen in figure 2) an outwardly tapered lower portion (42) with grip pads (90), and which is thicker than the underlying portion of the sidewall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the outer wall of the closure of Montgomery '534, forming it in the shape taught by Robinson '576, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

8. Claims 4-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Minnette US 6,343,705 in view of Robinson US 5,915,576.

Minnette '705 fails to teach an inwardly tapered upper portion of the cap, an outwardly tapered lower portion with grip pads, and which is thicker than the underlying portion of the sidewall.

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Robinson '576 teaches an inwardly tapered upper portion of the cap (unlabeled; best seen in figure 2) an outwardly tapered lower portion (42) with grip pads (90), and which is thicker than the underlying portion of the sidewall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the outer wall of the closure of Minnette '705, forming it in the shape taught by Robinson '576, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

9. Claims 4-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Vassallo US 6,640,987 in view of Robinson US 5,915,576.

Vassallo '987 fails to teach an inwardly tapered upper portion of the cap, an outwardly tapered lower portion with grip pads, and which is thicker than the underlying portion of the sidewall.

Robinson '576 teaches an inwardly tapered upper portion of the cap (unlabeled; best seen in figure 2) an outwardly tapered lower portion (42) with grip pads (90), and which is thicker than the underlying portion of the sidewall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the outer wall of the closure of Vassallo '987, forming it in the shape taught by Robinson '576, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery US 4,213,534 in view of Kusz US 5,687,863.

Montgomery '534 fails to teach the body portion being oval in cross-section, and the lugs positioned along a minor axis.

Kusz '863 teaches a container body (22) oval in cross-section and having lugs (52) positioned on a minor axis.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Montgomery '534, forming it to be ovular in cross-section, and providing the lugs on the minor axis, as taught by Kusz '863, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

11. Claim10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Minnette US 6,343,705 in view of Kusz US 5,687,863.

Minnette '705 fails to teach the body portion being oval in cross-section, and the lugs positioned along a minor axis.

Kusz '863 teaches a container body (22) oval in cross-section and having lugs (52) positioned on a minor axis.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Minnette '705, forming it to be ovular in cross-section, and providing the lugs on the minor axis, as taught by Kusz '863, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

12. Claim10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vassallo US 6,640,987 in view of Kusz US 5,687,863.

Vassallo '987 fails to teach the body portion being oval in cross-section, and the lugs positioned along a minor axis.

Kusz '863 teaches a container body (22) oval in cross-section and having lugs (52) positioned on a minor axis.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Vassallo '987, forming it to be ovular in cross-section, and providing the lugs on the minor axis, as taught by Kusz '863, because a change in form or shape is generally

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recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results.

In re Dailey et al., 149 USPQ 47.

Allowable Subject Matter

13. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

15. Regarding Applicant's Declaration, Examiner notes declaration 3(c) states "If the closure of the Kusz Patent *is turned prior to squeezing the squeeze pads* sufficiently in order to deactivate the child-resistant feature..." (emphasis added). However, the reference teaches squeezing the squeeze pads, and then turning the closure. It does not make sense to turn the closure prior to squeezing, and any inoperability experienced thereafter logically follows as a design of the child-resistant feature. Secondly, the Declaration must rebut the presumption of operability by a preponderance of the evidence. Furthermore, where the affidavit or declaration presented asserts that the reference relied upon is inoperative, the claims represented by applicant must distinguish from the alleged inoperative reference disclosure. See MPEP 716.07. It is the Examiner's position that the Declaration fails to attack the operability of the Kusz '863 reference, and that the reference may still properly be applied as prior art in rejecting the instant claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SUPERVISORY PATENT EXAMINER